

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CRAIG CUNNINGHAM,)	
)	
Plaintiff,)	
)	
v.)	
)	
RCF II, LLC;)	
RCF, LLC;)	
CRAIG HECKER;)	Case No. 3:16-cv-02629
GRS TELECOM, INC. f/k/a CallerID4U, Inc.;)	
PAUL MADUNO;)	
GIP TECHNOLOGY, INC.;)	Hon. Aleta A. Trauger
ADA MADUNO;)	U.S. District Court Judge
LUIS MARTINEZ;)	
MERCHANT WORTHY, INC.;)	
ROBERT BERNSTEIN;)	Hon. Joe Brown
BARI BERNSTEIN;)	U.S. Magistrate Judge
SPECTRUM HEALTH SOLUTIONS, INC.,)	
dba Spectrum Lead Generation;)	
GATEWAY SALES AND MARKETING, LLC;)	
TELX COMPUTERS, INC.;)	
JOHN/JANE DOES 1-5,)	
)	
Defendants.)	
)	

**DEFENDANTS RCF II, LLC, RCF, LLC, AND CRAIG HECKER'S MOTION TO
DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendants RCF II, LLC (“RCF II”), RCF, LLC (“RCF”) and Craig Hecker (“Hecker”) (collectively, the “Rapid Defendants”), through the undersigned counsel, and pursuant to Federal Rule of Civil Procedure 12(b)(6) and L.R. 7.01, hereby file this Motion to Dismiss Plaintiff’s Second Amended Complaint (the “SAC”) [D.E. 55] on the following grounds:

1) Plaintiff’s attempt to plead a claim for violation of a nonexistent Chapter of the United States Code, Title 47 (*i.e.*, “47 USC(c)(5)”) fails to state a claim upon which relief may

be granted because Plaintiff fails to adequately allege the Rapid Defendants knowingly failed to implement procedures for maintaining a do-not-call list; and

2) Plaintiff's attempts to plead claims for violations of the TCPA concerning "[c]alls placed after August 1, 2016" fails to state a claim upon which relief may be granted because Plaintiff fails to adequately allege sufficient facts or a theory of liability against the Rapid Defendants sufficient to support Plaintiff's claims.

In support of this Motion to Dismiss, the Rapid Defendants rely upon the memorandum of law filed with this Motion, as well as all pleadings and papers on file with the Court in this action, and upon such oral and written evidence as may be presented at the hearing of this Motion, if such hearing is necessary.

Dated: December 23, 2016

Respectfully submitted,

/s/ Lawren A. Zann
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*Attorneys for Defendants RCF, LLC, RCF II, LLC,
and Craig Hecker*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 23rd day of December, 2016, I filed the foregoing Motion to Dismiss with the Clerk of Court using the Court's CM/ECF System which will send electronic notification to all counsel of record. I also placed in the mail a copy of same to be sent to:

Craig Cunningham
Plaintiff, Pro-Se
5543 Edmondson Pike, Suite 248
Nashville, TN 37211

/s/ *Lawren A. Zann*

Lawren A. Zann